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RECORDATION NO. _____ Filed & Recd.
Agreement and Assignment APR 23 1974 -2 30 PM

STATE COMMERCE COMMISSION

dated as of February 15, 1974

between

ORTNER FREIGHT CAR COMPANY

and

**MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, Agent**

AGREEMENT AND ASSIGNMENT, dated as of February 15, 1974, between the corporation first named following the testimonium below (hereinafter called the Builder) and **MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY** acting as Agent, a corporation of Maryland, under an Agreement dated as of the date hereof (hereinafter called the Finance Agreement) (said Agent, so acting, being hereinafter called the Assignee).

WHEREAS, the Builder, **SEABOARD COAST LINE RAILROAD COMPANY**, a corporation of Virginia, and **LOUISVILLE AND NASHVILLE RAILROAD COMPANY**, a corporation of Kentucky, which two railroad companies operate, among other lines of railroad, the line known as "**CLINCHFIELD RAILROAD COMPANY**," leased from Carolina, Clinchfield and Ohio Railway and Carolina, Clinchfield and Ohio Railway of South Carolina (which first two named railroad companies are hereinafter individually called **SCL** and **L&N**, respectively, and collectively called the Railroad), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment).

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Whenever this Assignment incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "**Model Assignment Provisions**" annexed to the Conditional Sale Agreement as Part II of Annex A thereto (hereinafter called the Model Assignment Provisions), such provision of the Model Assignment Provisions shall be deemed to be a part of this Assignment as fully to all intents and purposes as though such provision had been set forth in full in this instrument.

SECTION 2. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 6 hereof and subject to payment by the Railroad pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraphs (a) and (b) of the third paragraph of Article 4 thereof and the last paragraph of Article 17 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of its indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations referred to or contained in Articles 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder referred to or contained in Articles 2, 3, 4, 5, 15, 16 and 17 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any

subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 3. Section 3 of the Model Assignment Provisions is herein incorporated as Section 3 hereof.

SECTION 4. Section 4 of the Model Assignment Provisions is herein incorporated as Section 4 hereof except that the last sentence is amended by substituting therefor the following:

The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, with the exception of amounts payable pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 5. The Builder will cause each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, to be plainly, distinctly, permanently and conspicuously marked as set forth in Item 5 in Schedule A to the Conditional Sale Agreement.

SECTION 6. Section 6 of the Model Assignment Provisions is amended as follows;

(a) by substituting for the first sentence of the third paragraph thereof the following: "The obligation of the Assignee hereunder to make payment for any Group of the Equipment is conditioned upon the Assignee having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder for such payment."

(b) by substituting for subparagraph (e) of first paragraph thereof the following:

“(e) Opinions of counsel for SCL and L & N, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (iii), (v), (vi) and (vii) of subparagraph (d) and stating that SCL and L & N are duly organized and existing corporations in good standing under the laws of their respective jurisdictions of incorporation and have the power and authority to own their respective properties and to carry on their businesses as now conducted;” and

(c) by substituting for the last sentence of the second paragraph thereof the following:

“In giving the opinions specified in said subparagraphs (d) and (e), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder; and in giving the opinion specified in subparagraph (d) counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinions of counsel for the Railroad as to such matter; and in giving the opinion specified in subparagraph (e) counsel may rely as to authorization, execution and delivery of the documents executed by the Assignee on the opinion of counsel for the Assignee.”

Section 6 of the Model Assignment Provisions, as so amended, is herein incorporated as Section 6 hereof.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. Section 8 of the Model Assignment Provisions is herein incorporated as Section 8 hereof.

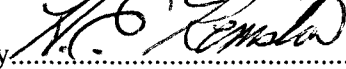
SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

SECTION 10. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience February 15, 1974, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Builder and the Assignee, each pursuant to due authority, have caused this Assignment to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

[CORPORATE SEAL]

ORTNER FREIGHT CAR COMPANY

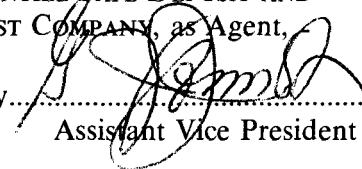
By 
Vice President

Attest:

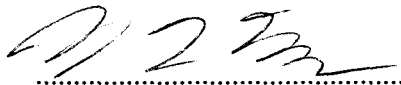

Assistant Secretary

[CORPORATE SEAL]

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

By 
Assistant Vice President

Attest:


Corporate Trust Officer

STATE OF OHIO
COUNTY OF HAMILTON } ss.:

On this 9th day of April, 1974, before me personally appeared H. E. Konistors, to me personally known, who, being by me duly sworn, says that he is a Vice President of ORTNER FREIGHT CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Howard E. Parr
Notary Public

[NOTARIAL SEAL]

My Commission Expires

STATE OF MARYLAND
CITY OF BALTIMORE } ss.:

On this 15th day of April, 1974, before me personally appeared G. J. Johnston, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Company and that said instrument was signed and sealed on behalf of said Company by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.

Nancy C. Schmidt
Notary Public

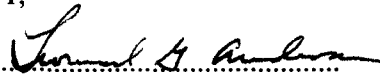
[NOTARIAL SEAL]

My Commission Expires JUL 1 1974

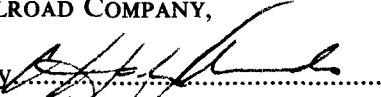
ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

SEABOARD COAST LINE RAILROAD COMPANY and LOUISVILLE AND NASHVILLE RAILROAD COMPANY hereby acknowledge due notice of and consent to the assignment made by the foregoing Agreement and Assignment dated as of February 15, 1974.

SEABOARD COAST LINE RAILROAD
COMPANY,

By 
Vice President and Treasurer

LOUISVILLE AND NASHVILLE
RAILROAD COMPANY,

By 
Vice President, Secretary
and Treasurer

ANNEX A

Part II

MODEL ASSIGNMENT PROVISIONS

SECTION 3. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 21 of the Conditional Sale Agreement have been effected.

SECTION 4. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase

Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 10 or 16 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 17 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and

expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the purchase price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the

Railroad under the Conditional Sale Agreement, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) An invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the

time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or such Investors;

(e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (iii), (v), (vi) and (vii) of subparagraph (d) of this Section 6 and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) An opinion of counsel for the Builder, dated as of such Closing Date, stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to the Assignee by this Assignment and (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and

(g) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms

by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder, and as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect to such Group. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.